

December 7, 2007

Joseph Williams-Bey
DOC #910763
Indiana State Prison
Po Box 41
Michigan City, Indiana 46361

*Re: Formal Complaint 07-FC-349; Alleged Violation of the Access to Public Records
Act by the Elkhart City Police Department*

Dear Mr. Williams-Bey:

This advisory opinion is in response to your formal complaint alleging the Elkhart City Police Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Department's response to your complaint for your reference. In my opinion the Department did not violate the APRA when it denied your request.

BACKGROUND

In your complaint you allege you submitted a request to the Department for "arrest reports and supplementary regarding state witness Phil Kitchen in cause number 20D01-0305-FA-147" and "arrest reports and supplementary regarding state witness Melissa D. Elswick." You received a response from the Department dated November 1. The Department denied the records based on the investigatory records exception found in I.C. §5-14-3-4(b)(1) but previously provided the information required to be made available for inspection and copying pursuant to I.C. §5-14-3-5. You mailed this complaint on November 19, and I received it on November 21.

The Department responded to your complaint by letter dated November 28 from City Attorney Lawrence Meteiver. Mr. Meteiver a copy of his response to you dated November 1. Mr. Meteiver indicated this request was a duplicate request but that he provided the information required to be provided by I.C. §5-14-3-5 at the time of your original request.

ANALYSIS

The public policy of the APRA states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

The Department is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If a request is made in writing, the public agency may deny the request if the denial is made in writing and the denial includes a statement of the specific exemption(s) authorizing the withholding of all or part of the public record and the name and title of the person responsible for the denial. I.C. §5-14-3-9(c).

A public agency may except from disclosure at the discretion of the agency "investigatory records of law enforcement agencies." I.C. §5-14-3-4(b)(1). An investigatory record is one that is compiled in the course of an investigation of a crime. I.C. §5-14-3-2(h).

The investigatory records exemption also states, "However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter." I.C. §5-14-3-4(b)(1). Section 5 sets out the specific types of information that must be made available for inspection and copying related to an arrest but does not require any recording of the arrest to be disclosed. I.C. §5-14-3-5.

Here the Department has indicated it has provided you the information required to be provided by Section 5 of the APRA. If a person is entitled to a copy of a public record under the APRA and the agency has reasonable access to a machine capable of reproducing the record, the agency must provide at least one copy of the record to the person. I.C. §5-13-3-8(e). The Department indicates it has provided you with one copy of the records you have requested. It is not required to provide another copy to you.

The Department indicated it denied the other records you requested under the investigatory records exception found in I.C. §5-14-3-4(b)(1). Arrest reports and supplementary materials compiled during the investigation of a crime are certainly investigatory records under the APRA. I.C. §5-14-3-2. The Department did not violate the APRA by denying the records.

CONCLUSION

For the foregoing reasons, it is my opinion the Department did not violate the Access to Public Records Act when it denied your request.

Best regards,

A handwritten signature in black ink that reads "Heather Willis Neal". The signature is written in a cursive, flowing style.

Heather Willis Neal
Public Access Counselor

cc: Lawrence Meteiver, Elkhart City Attorney
Pamela Westlake, Elkhart Chief of Police